133-1

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886

No. ~~746.~~ ~~1142~~ 167

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

JOSEPH STOWELL AND THOMAS BEVINGTON, CLAIMANTS, &c.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 19, 1886.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Massachusetts, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between the United States of America, by information, plaintiffs in error, and distillery at Lawrence et alia, Joseph Stowell and Thomas Bevington, claimants, defendants in error, a manifest error hath happened, to the great damage of the said United States, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done herein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the eighth day of September, in the year of our Lord one thousand eight hundred and eighty-six.

[SEAL.] JOHN G. STETSON,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by

LE BARON B. COLT,
U. S. Circuit Judge,
First Judicial Circuit.

2 CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts, ss:

And now, here, the judges of the circuit court of the United States, in and for the district of Massachusetts, make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, John G. Stetson, clerk of said circuit court of the United States, in and for the district of Massachusetts, have hereunto set my hand and the seal of said court this seventh day of September, A. D. 1886.

[SEAL.] JOHN G. STETSON,
Clerk.

3 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States, for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Satur-

day, the fifteenth day of May, in the year of our Lord one thousand eight hundred and eighty-six, before the honorable Le Baron B. Colt, circuit judge.

UNITED STATES OF AMERICA, BY INFORMATION, plaintiffs in error,
v.
DISTILLERY AT LAWRENCE ET ALIA, JOSEPH Stowell and Thomas Bevington, claimants, defendants in error.

This cause was duly entered at the October term of this court, A. D. 1885, the writ of error to the district court of the United States for this district being sued out by the United States of America, plaintiffs in error, dated the twenty-sixth day of August, A. D. 1885, and made returnable at the said October term of this court.

The return of the district court of the United States for this district upon said writ of error is in the words following:

4 *Return of the district court.*

DISTRICT COURT OF THE UNITED STATES,
District of Massachusetts, ss:

And now, here, the judge of the district court of the United States, in and for the district of Massachusetts, makes return of this writ by annexing hereto and sending herewith, under the seal of the said district court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the circuit court of the United States, as within commanded.

In testimony whereof, I, Elisha Bassett, deputy clerk of said district court of the United States, in and for the district of Massachusetts, have hereto set my hand and the seal of said court, this seventh day of September, A. D. 1885.

[L. S.] ELISHA BASSETT
Deputy Clerk.

5 The transcript of the record of the district court annexed to said writ is as follows:

Transcript of record of district court.

UNITED STATES OF AMERICA,
Massachusetts District, ss:

At the district court of the United States, begun and holden at Boston, within and for the district of Massachusetts, on the fourth Tuesday (being the twenty-third day) of June, in the year of our Lord one thousand eight hundred and eighty-five. Before the honorable Thomas L. Nelson, judge.

THE UNITED STATES OF AMERICA, BY INFORMATION,
v.
DISTILLERY AT LAWRENCE ET ALIA.

This information was filed in court on the eighteenth day of November, A. D. 1884, and is as follows, viz:

6 UNITED STATES OF AMERICA,
Massachusetts District, ss:

THE UNITED STATES, BY INFORMATION,
v.
DISTILLERY IN LAWRENCE ET ALIA.

To the honorable Thomas Leverett Nelson, judge of the district court of the United States for the district of Massachusetts:

Be it remembered that on this eighteenth day of November, in the year of our Lord one thousand eight hundred and eighty-four, before the honorable Thomas Leverett Nelson, judge as aforesaid, comes in his own proper person George Partridge Sanger, esq., attorney of the said United States in and for said district of Massachusetts, who prosecutes for the said United States in this behalf, and in the name and behalf of the United States of America, propounds and gives the said judge to understand and be informed that, at a time past, to wit, on the fourteenth day of November, in the year aforesaid, Charles W. Slack, then and now collector of the third internal-revenue district of Massachusetts, did, at Lawrence, in said district, seize as forfeited to the use of the said United States of America, all the right, title, and interest of Thomas Dickson, Eli B. Bellows, and William Stone in and to certain real estate situated on Hampshire street, in said Lawrence, and numbered three hundred and forty-five on said street, being about fourteen thousand square feet of land, with the buildings thereon, the same being lots forty-nine, fifty, one hundred and forty, and one hundred and forty-one, on a plan belonging to William Hurd, dated June 24, 1846, recorded with Essex County deeds, together with the following personal property, to wit:

One light buggy wagon; one hay cutter; one buffalo robe (old); two team horses; two team harnesses; one pitchfork; one single-team wagon (new); one single-team wagon (old); two skids; one platform scales; one hoe; lot of barrel shooks; one old sleigh for teaming; lot of old iron hoops; lot of beer barrels in shed and yard; lot old iron in ash barrels; lot old iron hoops; one half bunch of shingles; lot of old barrels,
7 hogsheads, and one half barrels; lot of strap iron; one (large) cooper's plane; one cooper's stalse (iron); one cooper's mall (iron); one cooper's horse (wood); lot of shooks; one grindstone; two cooper's augers and one rimer; lot of iron bushes; one small tank; one large tank; three hogsheads; four half barrels; three barrels; two small tubs; lot of old iron hoops; one large tank; one barrel with faucet; one cooper's adze; one barrel without head; one steam pump; one rubber hose, about fifty feet; one iron wrench; one iron poker; one pair skids; one lantern and reflector; one hogshead ale; one barrel ale; one boiler in brickwork; lot of old iron pipe; lot of coke; one shovel; one iron poker; one iron wrench; one small upright engine; one ladder; one table, two chairs; one iron safe and contents, unknown; one inkstand and waste basket; one malt mill; thirty-four bags malt; two bags and one half barrel bungs; one mash tank; two fermenting tanks (large); one worm (zinc); two skimmers; one ladder; one barrel moss; two and one-half bales of hops; one mash tank; one patent cooler (copper); one hopper; one tin yeast pail; lot of old bricks; two copper bottoms of fermenting tubs; lot of

old malt bags; four tanks (wood); one malt mill; lot of old bricks; lot of old copper.

Three-story frame brewery sheds and outbuildings; iron piping, shafting, pulleys, and fixtures in building, not named; about 14,000 feet of land (the same being lots 49, 50, 140, 141, on a plan belonging to Wm. Hurd, dated June 24, 1846, recorded with Essex registry of deeds).

For that the said goods, wares, and merchandise so seized as aforesaid, to wit, the above-described personal property, was on the first day of November in said year, and still is, owned by and in possession of the said Dixon, Bellows, and Stone, and were at the time of the seizure aforesaid, found on said above-described real estate, and in buildings, rooms, yards, and enclosures connected therewith, and used with and constituting a part of said premises; and that on said first day of November the said Dixon, Bellows, and Stone did use said premises as a distillery, and did thereon, on said first day of November, at said Lawrence, carry on the business of distillers, without having given bond therefor as required by law. And further, for that the said Dixon, Bellows, and Stone did, on said first day of November, at said Lawrence and on said premises, engage in and carry on the business of distillers, with intent to defraud the United States of the tax on the spirits distilled by them.

8 And the said attorney of the United States, on behalf of the said United States, saith that all and singular the premises aforesaid are true; wherefore the said attorney prays the advisement of the said judge in this behalf, and that any and all person or persons be cited in general and special to answer the premises, to the end that said real and personal property be condemned by the definitive sentence and decree of said judge as forfeited to the use of the said United States, and that the proceeds thereof, after condemnation, be distributed in manner and form as provided in and by the statute of the said United States.

GEORGE P. SANGER,
United States Attorney for the District of Massachusetts.

Warrant and monition.

Thereupon, on said eighteenth day of November, A. D. 1884, by order of the judge, a warrant and monition issued, commanding the marshal to give notice to all persons concerned that the foregoing information had been filed and that trial would be had thereon at a district court to be holden at the United States court-house in Boston, in said district of Massachusetts, on Tuesday, the ninth day of December next, at 10 a. m., and to give said notice by advertising the same in the Lawrence American, one of the public newspapers printed at said Lawrence, and by posting a copy of the same notice at the said court-house in Boston, fourteen days at least before said day of trial, and to take the said real and personal property into his custody and to make due return of his doings.

And the marshal made return at follows, viz:

UNITED STATES OF AMERICA,
Massachusetts District, ss:

BOSTON, *November*, 1884.

Pursuant hereunto, I have given notice to all persons concerned that the information within named has been filed and that trial will be had

thereon on the ninth day of December next, by advertising the substance of the within monition in the Lawrence American, one of the newspapers printed at Lawrence, in said district, and by posting up a copy of
9 the same notice in the United States court-house in Boston, in said district, fourteen days before the day within named for trial; and on the eighteenth day of November I took the within-named real and personal property into my custody.

N. P. BANKS,
U. S. Marshal.

This information was entered at the September term of this court, A. D. 1884, and thence was continued to the December term thereof, A. D. 1884, when on the ninth day of December, A. D. 1884, before this court, personally appeared Joseph Stowell, of Lawrence, in the district of Massachusetts, claimant of the real estate and other property.

And the said Stowell, submitting himself to the jurisdiction of this court, bound himself, his heirs, executors, and administrators in the sum of $200 unto the said United States, that the said Stowell should pay all costs and expenses which should be awarded against him in this suit, upon the final adjudication thereof, or by any interlocutory order, whether it be in this or any appellate court.

On said ninth day of December, A. D, 1884, the following claim of Joseph Stowell for real estate, etc., was filed in Court, viz:

DISTRICT COURT OF THE UNITED STATES,
Massachusetts District:

In case of
THE UNITED STATES, BY INFORMATION,
vs.
DISTILLERY IN LAWRENCE ET ALIA.

Claim.

And now comes before said court, Joseph Stowell, of Lawrence, in said district, and respectfully represents that he is the true, bona fide lawful owner of the real estate described in said information, and was the true bona fide and lawful owner of the same at the time of the filing of said information and the issuing of the warrant thereunder, and that no other person was, or is, the owner thereof; that he claims that much of the property described in said information, to wit, the boiler in brickwork,
10 the iron pipe, the tanks, tubs and barrels, the pumps, the malt mill, and all the machinery and fixtures are his property, and that the same was the property which he, the said Stowell, owned at the time of said seizure; that the same was conveyed to him with and as a part of said real estate, by said Thomas Dixon, on the thirteenth day of October last, and that he is now the sole owner thereof.

That he is also the owner of seventy-four (74) tubs or butts, eighty-five (85) bushels of malt, and two and one-half bales of hops, which he purchased of said Dixon prior to the filing of said information, and the time

of said seizure. Wherefor' he prays that said property may be ordered to be released from said seizure and restored and delivered to him.

JOSEPH STOWELL.

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

DEC. 9, 1884.

Sworn to by said Joseph Stowell
Before me.
[SEAL.]

ELISHA BASSETT,
Notary Public.

Stipulation for costs and expenses, by Thomas Bevington, claimant.

On the thirteenth day of December, A. D. 1884, before this court personally appeared Thomas Bevington, of Lawrence in the district of Massachusetts, claimant of a part of the property seized. And the said Bevington, submitting himself to the jurisdiction of this court, bound himself, his heirs, executors and administrators, in the sum of two hundred dollars, unto the said United States, that the said Bevington should pay all costs and expenses which should be awarded against him in this suit, upon the final adjudication thereof, or by any interlocutory order, whether it be in this or any appellate court.

On said thirteenth day of December, A. D. 1884, the following claim for horses, wagons, and harnesses by Thomas Bevington was filed in court, viz:—

11 UNITED STATES OF AMERICA,
District Court, District of Massachusetts:

UNITED STATES
v.
DISTILLERY AT LAWRENCE ET ALIA.

Claim.

And now comes Thomas Bevington, of Lawrence, in said district, and respectfully claims that he is the true and bona fide owner of the two horses, two wagons, and two harnesses seized in the above-entitled case, upon the premises described, at said Lawrence; that before said information was filed and before said horses, wagons, and harnesses were seized he was the sole, true, and bona fide owner of the same.

Wherefore he prays that the court will order that the same be restored and delivered to him.

THOS. BEVINGTON.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

DECEMBER 13, 1884.

Sworn to by said Bevington.
Before me.
[SEAL.]

ELISHA BASSETT,
Notary Public.

On the thirteenth day of December, A. D. 1884, proclamation having been duly and legally made for all persons to come forward who had aught to say why a decree should not be entered against the unclaimed property seized as aforesaid, and no person appearing default was made; thereupon this information was taken pro confesso, and it was ordered, adjudged, and decreed by the court that the said unclaimed property be and remain forfeited to the United States of America.

12 *Warrant for sale of unclaimed property.*

On the twenty-fourth day of February, A. D. 1885, by order of the judge, a warrant issued, commanding the marshal to sell the said goods, wares, and merchandise to the highest bidder at public auction, at Lawrence, within said district, on Wednesday, the eighteenth day of March next, at o'clock first giving fifteen days' notice, at least, of the time and place of sale, by advertising the same in the Lawrence American, one of the newspapers printed at said Lawrence, and by proclamation of the town crier in the usual form, on the day of sale, the money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this case directs. And to make due returns of his doings.

And the marshal made return as follows, viz:

UNITED STATES OF AMERICA,
District of Massachusetts:

BOSTON, *March* 19, 1885.

Pursuant to this precept I have caused the goods, wares, and merchandise within named to be sold by public auction and to the highest bidder, at Lawrence, on the day, hour, and place therein directed, having given fifteen days' previous notice of the time, place, and manner of the sale, in the Lawrence American, one of the newspapers printed in Lawrence, and by the town crier on the day of sale, and at such sale the sum received and expenses incurred were as under:

1885.
March 18. Sold per property within named to various parties for cash $47.92

Expenses.

Serv		$2.00
Tr		1.80
Copies		3.00
Proc. & crier		2.42
Ad. & pos.....		4.50
B. of sale & schedule, ...		3.00
13 Auct.....	$10.00	
Coms.....	4.79	
Custody		
Expenses		50
Labor		
		$32.01
		$15.91

Whereby the net sales amounted to $15.91, which I pay over to the clerk of the court aforesaid, to be disposed of as the court directs.

Attest: N. P. BANKS, *Marshal*,
By W. D. POOL, *Deputy*.

Received from N. P. Banks, marshal, $15.91, being (as he saith) the proceeds of the foregoing sale, the moneys to be disposed of as the court directs.

ELISHA BASSETT, *Deputy Clerk*.

BOSTON, *March* 19, 1885.

Warrant for sale of two team horses.

On the twenty-fourth day of February, A. D. 1885, by order of the judge, a warrant issued, commanding the marshal to sell the said horses to the highest bidder at public auction, at Lawrence, within said district, on Wednesday, the fourth day of March next, at o'clock first giving seven days' notice, at least, of the time and place of sale, by advertising the same in the Lawrence American, one of the newspapers printed at said Lawrence, and by proclamation of the town crier in the usual form, on the day of sale, the money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this case directs, and to make due return of his doings.

And the marshal made return as follows, viz:

UNITED STATES OF AMERICA,
District of Massachusetts:

BOSTON, *March* 6, 1885.

Pursuant to this precept I have caused the team horses within 14 named to be sold by public auction, and to the highest bidder, at Lawrence, on the day, hour, and place therein directed, having given seven days' previous notice of the time, place, and manner of the sale in the Lawrence American, one of the newspapers printed in Lawrence, and by the town crier on the day of sale, and at such sale, sum received and expenses incurred, were as under:

1885.

March 5.	Sold one horse to Frank Buckminster	$73.00	
	Sold one horse to Wm. H. Gallupe	21.00	
			$94.00

Expenses.

Serv	$2.00	
Tr	1.80	
Copies	3.00	
Proc. & crier	2.43	
Ad. & pos	5.50	
B. of sale	2.00	
Auct	10.00	
Coms	4.70	
Custody		
Expenses	5.00	
Labor		
		$36.42
		$57.58

Whereby the net sales amounted to $57.58, which I pay over to the clerk of the court aforesaid, to be disposed of as the court directs.

Attest:

N. P. BANKS, *Marshal*,
By W. D. POOL, *Deputy*.

Received from N. P. Banks, marshal, $57.58, being (as he saith) the proceeds of the foregoing sale; the moneys to be disposed of as the court directs.

ELISHA BASSETT, *Deputy Clerk*.

BOSTON, *March* 19, 1885.

15 On the sixth day of February, A. D. 1885, the following agreed facts were filed in court, viz:

DISTRICT COURT OF THE UNITED STATES,
District of Massachusetts:

THE UNITED STATES, BY INFORMATION,
v.
DISTILLERY AT LAWRENCE ET ALIA.

Joseph Stowell and Thomas Bevington, claimants.

Agreed facts.

It is agreed by and between the United States and the claimants to the property seized on the above-entitled information, that the following facts are true:

1. One Thomas Dixon, named in the information, has carried on the business of a brewer on the premises seized, for some years, under the name of the Albion Brewing Company. Prior to August, 1884, he had partners in the business; but since that time and up to the seizure he has carried it on alone. The requirements of the internal-revenue laws concerning breweries were duly complied with by the Albion Brewing Company. The premises of the Albion Brewing Company consisted of a frame building and sheds annexed and connecting therewith by doors, and a yard connected therewith.

2. In the latter part of September, 1884, William Stone and Eli B. Bellows, both named in the information, with the knowledge and consent of Dixon, set up in the third and attic story of said building, which story was not used in the brewing business, except as large tanks reached up into it, which tanks were used in brewing, a copper still, which was bricked up with a furnace beneath it, and connected with said still by a gooseneck, a worm which was placed in a large tub or vat placed there for the purpose. These remained in position and were in proper condition for use in distilling spirits until Nov. 9, 1884, and during that time two mashes were brewed from molasses, yielding two hogsheads and one barrel of rum. The still was not registered as required by law; no bond, therefore, was given; no Government book was kept; the still was run with intent to defraud the United States of the tax on the spirits distilled, and the United
16 States was defrauded of the tax on the spirits distilled. On Nov. 10 and 11 the still, gooseneck, and worm were taken down and removed by said Dixon.

3. On Nov. 14, 1884, the collector of internal revenue for the third collection district of Massachusetts, seized the property named in the information.

4. The property seized consisted of:

(1) Land and buildings.

(2) Personal property.

(3) Fixtures which would pass by a deed of real estate.

There were on the premises a large boiler set in brick, a small engine, a small pump, certain large vats and tanks which the claimants allege to be part of the real estate, but which the Government claims to be fixtures. A part, or all of them, were such as between landlord and tenant would be trade fixtures.

Part or all of them were apparatus used in the brewery, and such as might properly be in the brewery, and part or all of them were used as apparatus for the illicit distilling above set out, and was fit to be used in connection with said still.

All of the said fixtures and all of the personal property seized was at the time of the said illicit distilling and at the time of the seizure, in the possession and custody and under the control of said Dixon, as was also said still, worm and gooseneck, and was found in the said building, and the said sheds thereto annexed, and in a yard and enclosure connected with the building in which the said still and distilling apparatus was set up as aforesaid, but it did not appear that the said sheds were in any way used in connection with the distillery.

5. Neither of the claimants knew that a still had been set up on the premises until after the seizure. Dixon still continued to carry on his business as a brewer while said still was being used.

6. Forfeiture is claimed under Revised Statutes, sect. 3,258 and 3,305 and sect. 16 of the act of Feb. 8, 1885, chap. 36. If the court is of the opinion that a forfeiture of any or all of the property claimed is incurred under either of these provisions, the information may be amended if necessary.

7. On June 11th, 1883, said Dixon conveyed the real estate seized and described in the information to Joseph Stowell, one of the claim-
17 ants, by mortgage deed, subject to a prior mortgage of $1,500 to secure a debt of $2,500. There was a breach in the condition of the mortgage, and instead of foreclosing, said Stowell, on Oct. 13, 1884, took from said Dixon a quitclaim deed of the premises, the consideration named in said quitclaim deed being $8,000.

On June 5, 1884, said Stowell took a bill of sale from the Albion Brewing Company of seventy-four new butts, part of which were seized, and are named in the information as security for endorsing a note of that date for $350. This note was renewed until one for a like sum dated Oct. 7, 1884, went to protest on Nov. 10, 1884, which said Stowell paid at the Pacific Bank. On Nov. 8, 1884, said Stowell took a bill of sale of eighty-five bushels of malt and two and one-fourth bales of hops, named in the information, as security for endorsing a note for $100 for ten days. Said Stowell paid this note after it had been protested on the last day of grace. Neither of the bills of sale have ever been recorded, but the conveyances of real estate were duly recorded.

The original conveyances may be referred to at the hearing if desired.

8. On Nov. 11, 1884, said Dixon executed and delivered to Thomas Bevington, one of the claimants, a bill of sale of horses, carts, and other personal property, part of which was seized, and is named in the information, as security for a loan of $700.00, which 'oan remains unpaid. This bill of sale was recorded in the office of the city clerk of the city of Lawrence, Nov. 18, 1884.

9. At the time of the bill of sale of the butts they were pointed out to Stowell by Dixon as those he was to have, but they remained in the possession of Dixon. No delivery was ever made of the malt and hops.

The horses and wagons conveyed to Bevington were kept on a farm of Dixon's at North Andover, were used in the business of the brewery, and those seized were found at the brewery. Dixon pointed out the property to Bevington, and said that he delivered it, but no other possession was taken of it. Bevington appointed Dixon's son as nominal keeper, but the property remained under the control of Dixon, and was used by him.

GEORGE P. SANGER,
U. S. Att'y, Attorney for Plaintiffs.
SHERMAN & BELL,
For Claimants.

18 From said December term, A. D. 1884, this information was continued from term to term to this present term. And now on this eleventh day of July, A. D. 1885, after a full hearing of the cause, upon the facts proved, and arguments of counsel and mature deliberation thereon had, it is ordered by the court that this information be dismissed as to the real estate and as to all the personal property claimed by J. Stowell and Thos. Bevington.

On the fifteenth day of August, A. D. 1885, the following exceptions by plaintiff were filed in court and allowed, viz:

DISTRICT COURT OF THE UNITED STATES,
District of Massachusetts:

JUNE TERM, A. D. 1885.

THE UNITED STATES, BY INFORMATION,
v.
DISTILLERY AT LAWRENCE ET ALIA.

Joseph Stowell and Thomas Bevington, claimants.

Plaintiffs' exceptions.

This was an information for the forfeiture of the property described in it, which had been seized by the collector of internal revenue for the third collection district of Massachusetts, before the filing of the information. No claim was made to a portion of the property seized, and against the portion not claimed a default was duly entered, and the same has been duly sold and the proceeds paid into court. A claim for another portion was duly made by Joseph Stowell, and a claim for the residue was duly made by Thomas Bevington.

At the trial in the district court between the United States and the claimants, Stowell and Bevington, the facts contained in a written paper, signed by counsel for all the parties, and filed in the case on Feb. 6, 1885, and made part of the record of the case, were conceded by all the parties to be true, and no evidence of any further facts was introduced by either party.

Upon the facts stated in said agreement, none of which were in dispute, the court was of opinion and ruled that the information
19 could not be maintained against the property claimed by Stowell and Bevington, and ordered the information dismissed as to the property claimed by them. To which ruling the plaintiff duly excepted, and prays that its exceptions may be allowed.

CHARLES ALMY, JR.,
Assistant United States Attorney for the United States.

The foregoing bill of exceptions having been examined by me, and found to conform to the truth, is hereby allowed.

THOMAS L. NELSON,
United States District Judge.

I, Elisha Bassett, deputy clerk of the United States for the district of Massachusetts, hereby certify that the foregoing is a true copy of the record and proceedings in said cause, with all things concerning the same.

In witness whereof I have hereto subscribed my name and affixed the seal of said court this seventh day of September, A. D. 1885.

[SEAL.] ELISHA BASSETT,
Deputy Clerk.

This cause entered, as aforesaid, at the October term of said circuit court, A. D. 1885, came on to be heard at the said October term, and was argued by counsel for the respective parties, and was thence continued under advisement to this present May term, A. D. 1886, and the court being of opinion that there is no error, it is now, to wit, July 9, 1886, considered by the court that the judgment of the said district court in this cause be and the same is hereby affirmed, and that the information be dismissed as to the real estate and as to all the personal property claimed by Joseph Stowell and Thomas Bevington.

A true record.

Attest: JOHN G. STETSON,
Clerk.

20 CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts:

UNITED STATES, BY INFORMATION,
v.
DISTILLERY AT LAWRENCE ET ALIA, JOSEPH Stowell and Thomas Bevington, claimants. } No. 2519, law docket.

Assignment of errors and prayer for reversal.

The United States assigns the following errors in the above cause and ask that judgment be reversed:

1st. That the court ruled upon the facts stated in the agreed statement

that the information could not be maintained against the property claimed by Stowell and Bevington, and ordered the information dismissed as to said property, whereas the court should have ruled that upon said facts the information could be maintained and should have ordered judgment thereon for the United States against said property, and decreed that the same be condemned as forfeited to the use of the United States.

GEO. M. STEARNS,
United States Att'y for the District of Massachusetts.

21 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record in the cause entitled United States of America, by information, plaintiffs in error, v. Distillery at Lawrence et alia, Joseph Stowell and Thomas Bevington, claimants, defendants in error, lately determined in said court, and of the assignment of errors and prayer for reversal filed therein.

In testimony whereof I have hereto set my hand and affixed the seal of said circuit court at Boston in said district this seventh day of September, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

[SEAL.] JOHN G. STETSON,
Clerk.

22 *Citation.*

The United States of America, to Joseph Stowell and Thomas Bevington, both of Lawrence, in the District of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States within and for the district of Massachusetts, wherein the United States of America in a cause entitled United States, by information, versus Distillery at Lawrence et alia, Joseph Stowell and Thomas Bevington, claimants, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable LeBaron B. Colt, United States circuit judge, first judicial circuit, this eighth day of September, in the year of our Lord one thousand eight hundred and eighty-six.

LEBARON B. COLT,
U. S. Circuit Judge.

23 UNITED STATES OF AMERICA,
Massachusetts District, ss:

BOSTON, *Sept. 9th*, 1886.

Pursuant hereunto I have this day notified the within-named Joseph Stowell and Thomas Bevington of the within citation by giving in hand to each of them at Lawrence a true and attested copy of this precept.

N. P. BANKS.

Fees:

Ser	4.00
Tr	1.80
	5.80

24 (Indorsement on cover:) No. 746. The United States, plaintiff in error, vs. Joseph Stowell and Thomas Bevington, claimants, &c. Massachusetts. C. C. U. S. Filed October 12, 1886.

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

THE UNITED STATES
vs.
JOSEPH STOWELL AND THOMAS Bevington, claimants, etc.
} No. 167.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

On the 14th day of November, 1884, Charles W. Slack, collector of internal revenue for the third district of Massachusetts, seized certain lands, tenements, and personal property, which were found in the possession, custody, and under the control of one Thomas Dixon, upon the ground that they had been forfeited to the United States.

A brewery was carried on by said Dixon on the premises, and the property so taken consisted of a tract land containing 14,000 square feet on Hampshire street, in the town of Lawrence, upon which was a frame building and sheds annexed and connecting therewith by doors, together with fixtures which would pass by deed of real estate, and also personal property consisting of horses, carts, etc., which were used in the business of the brewery, and which were found on the premises at the time of the seizure. On the 18th of November, 1884, an information was filed against the distillery in Lawrence *et alia*, praying for condemnation and forfeiture of the property seized.

In December after the seizure Joseph Stowell made claim to the real estate and fixtures on the ground that the same had been sold and conveyed to him by deed on the 13th day of October, 1884. He also claimed certain tubs or butts and a quantity of malt and hops, upon the ground that he had bought them of Dixon before the seizure.

One Thomas Bevington also made a claim to two wagons, two horses and harness, alleging that he was the bona fide owner thereof.

No claim was made to a portion of the property seized, and the same was afterwards sold by the marshal.

The matter litigated was that which related to the claims of Stowell and Bevington.

It is admitted in the agreed statement of facts that an illicit distillery was established and carried on in the brewery building with the knowledge and consent of Dixon as early as September, 1884, which was prior to the deed to Stowell and the bill of sale to Bevington.

It is also provided in the agreed statement of facts that if the court is of the opinion that a forfeiture of any or all of the property claimed is incurred under either of the provisions of the law referred to therein, the information may be amended if necessary.

The cause was tried in the district court upon an agreed statement of facts and resulted in a judgment in favor of the claimants, the court holding that the information could not be maintained against the property claimed by Stowell and Bevington and ordering the same to be dismissed as to said property. It was taken from there to the circuit court, where the decision of the district court was affirmed, and it now comes into the Supreme Court upon an assignment of errors and prayer for reversal.

The following is the agreed statement of facts:

District court of the United States, district of Massachusetts.

THE UNITED STATES, BY INFORMATION,
v.
DISTILLERY AT LAWRENCE ET ALIA. JOSEPH Stowell and Thomas Bevington, claimants.

AGREED FACTS.

It is agreed by and between the United States and the claimants to the property seized on the above-entitled information that the following facts are true:

1. One Thomas Dixon, named in the information, has carried on the business of a brewer on the premises seized for some years under the name of the Albion Brewing Company. Prior to August, 1884, he had partners in the business; but since that time and up to the seizure he has carrried it on alone. The requirements of the internal-revenue laws concerning breweries were duly complied with by the Albion Brewing Company. The premises of the Albion Brewing Company consisted of a frame building and sheds annexed and connecting therewith by doors, and a yard connected therewith.

2. In the latter part of September, 1884, William Stone and Eli B. Bellows, both named in the information, with the knowledge and consent of Dixon, set up in the third and attic story of said building—which story was not used in the brewing business except as large tanks reached up into it, which tanks were used in brewing—a copper still, which was bricked up, with a furnace beneath it, and connected with said still by a goose-neck, a worm, which was placed in a large tub or vat placed there for the purpose. These remained in position and were in proper condition for use in distilling spirits until November 9, 1884, and during that time two mashes were brewed from molasses, yielding two hogsheads and one barrel of rum. The still was not registered, as required by law; no bond, therefore, was given; no Government book was kept. The still was run with intent to defraud the United States of the tax on the spirits distilled, and the United States was defrauded of the tax on the spirits distilled. On November 10 and 11 the still, goose-neck, and worm were taken down and removed by the said Dixon.

3. On November 14, 1884, the collector of internal revenue for the third collection district of Massachusetts, seized the property named in the information.

4. The property seized consisted of: (1). Land and buildings. (2) Personal property. (3) Fixtures which would pass by a deed of real estate.

There were on the premises a large boiler set in brick, a small engine, a small pump, certain large vats and tanks which the claimants allege to be part of the real estate, but which the Government claims to be fixtures. A part, or all of them, were such as between landlord and tenant would be trade fixtures.

Part or all of them were apparatus used in the brewery, and such as might properly be in the brewery, and part or all of them were used as apparatus for the illicit distilling above set out, and was fit to be used in connection with said still.

All of the said fixtures and all of the personal property seized was, at the time of said illicit distilling and at the time of the seizure, in the possession and custody and under the control of said Dixon, as was also said still, worm, and gooseneck, and was found in the said building, and the said sheds thereto annexed, and in a yard and enclosure connected with the building in which the said still and distilling apparatus was set up as aforesaid, but

it did not appear that the said sheds were in any way used in connection with the distillery.

5. Neither of claimants knew that a still had been set up on the premises until after the seizure. Dixon still continued to carry on his business as a brewer while said still was being used.

6. Forfeiture is claimed under Revised Statutes, sections 3258 and 3305, and section 16 of the act of February 8, 1875, chapter 36. If the court is of the opinion that a forfeiture of any or all of the property claimed is incurred under either of these provisions, the information may be amended if necessary.

7. On June 11, 1883, said Dixon conveyed the real estate seized and described in the information to Joseph Stowell, one of the claimants, by mortgage deed, subject to a prior mortgage of $1,500 to secure a debt of $2,500. There was a breach in the condition of the mortgage, and instead of foreclosing, said Stowell, on October 13, 1884, took from said Dixon a quitclaim deed of the premises, the consideration named in said quitclaim deed being $8,000.

On July 5, 1884, said Stowell took a bill of sale from the Albion Brewing Company of seventy-four new butts, part of which were seized, and are named in the information as security for indorsing a note of that date for $350. This note was renewed until one for a like sum dated October 7, 1884, went to protest on November 10, 1884, which said Stowell paid at the Pacific Bank. On November 8, 1884, said Stowell took a bill of sale of eighty-five bushels of malt and two and one-fourth bales of hops, named in the information, as security for indorsing a note for $100 for ten days. Said Stowell paid this note after it had been protested on the last day of grace. Neither of the bills of sale have ever been recorded, but the conveyances of real estate were duly recorded.

The original conveyances may be referred to at the hearing if desired.

8. On November 11, 1884, said Dixon executed and delivered to Thomas Bevington, one of the claimants, a bill of sale of horses, carts, and other personal property, part of which was seized, and is named in the information, as security for a loan of $700, which loan remains unpaid. This bill of sale was recorded in the office of the city clerk of the city of Lawrence, November 18, 1884.

9. At the time of the bill of sale of the butts they were pointed

out to Stowell by Dixon as those he was to have, but they remained in the possession of Dixon. No delivery was ever made of the malt and hops.

The horses and wagons conveyed to Bevington were kept on a farm of Dixon's at North Andover, were used in the business of the brewery, and those seized were found at the brewery. Dixon pointed out the property to Bevington, and said that he delivered it, but no other possession was taken of it. Bevington appointed Dixon's son as nominal keeper, but the property remained under the control of Dixon, and was used by him.

SPECIFICATION OF ERRORS.

The court erred in holding that the real estate and personal property did not become forfeited at the time of the commission of the offense charged in the information, and ruling that upon the agreed statement of facts the information could not be maintained against the property claimed by Stowell and Bevington, and in ordering the information dismissed as to said property.

BRIEF OF ARGUMENT.

I.

The sections of the United States internal revenue laws referred to in the foregoing agreed statement of facts are as follows:

SEC. 3258. Every person having in his possession or custody, or under his control, any still or distilling apparatus set up, shall register the same with the collector of the district in which it is, by subscribing and filing with him duplicate statements, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its cubic contents, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used; one of which statements shall be retained and preserved

by the collector, and the other transmitted by him to the Commissioner of Internal Revenue. Stills and distilling apparatus shall be registered immediately upon their being set up. Every still or distilling apparatus not so registered, together with all personal property in the possession or custody or under the control of such person, and found in the building or in any yard or inclosure connected with the building in which the same may be set up, shall be forfeited. And every person having in his possession or custody, or under his control, any still or distilling apparatus set up which is not so registered shall pay a penalty of five hundred dollars, and shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned for not less than one month nor more than two years.

(SEC. 3281.) Section 16, Act of February 8, 1875. That any person who shall carry on the business of a rectifier, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquors, retail dealer in malt liquors, or manufacturer of stills, without having paid the special tax as required by law, or who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offense, be fined not less than one hundred dollars nor more than five thousand dollars and imprisoned not less than thirty days nor more than two years. And all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or rectifying establishment, or in any building, room, yard, or inclosure connected therewith, and used with or constituting a part of the premises; and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or inclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery which shall be found in any such building, yard, or inclosure, and all the right,

title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress shall be forfeited to the United States.

SEC. 3305. Whenever any false entry is made in, or any entry required to be made is omitted from, either of the said books mentioned in the two preceding sections, with intent to defraud or to conceal from the revenue officers any fact or particular required to be stated and entered in either of said books, or to mislead in reference thereto; or any distiller as aforesaid omits or refuses to provide either of said books, or cancels, obliterates, or destroys any part of either of such books, or any entry therein, with intent to defraud, or permits the same to be done, or such books, or either of them, are not produced when required by any revenue officer, the distillery, distilling apparatus, and the lot or tract of land on which it stands, and all personal property on said premises used in the business there carried on, shall be forfeited to the United States. And every person who makes such false entry, or omits to make any entry hereinbefore required to be made, with the intent aforesaid, or who causes or procures the same to be done, or fraudulently cancels, obliterates, or destroys any part of said books, or any entry therein, or willfully fails to produce such books, or either of them, shall be fined not less than five hundred dollars, nor more than five thousand dollars, and imprisoned not less than six months, nor more than two years.

It will be noted from the agreed facts that all the property in controversy was, at the time of the erection of the illicit distillery, owned and under the control of Dixon. He was party to the scheme for carrying on and operating an illicit distillery. It was on his premises, with his consent, and by his co-operation. It was in the same building with his brewery, close to it, and to a certain extent connected with it. He was as much a party to the fraudulent acts committed against the Government as Stone and Bellows, who set up and operated the still.

In law he was liable to all the penalties and forfeitures

of a distiller, and his property, real and personal, became and was forfeited.

The establishment of the distillery in Dixon's building, and the carrying it on in the manner set forth in the agreed statement of facts, was a violation of each and all the sections of the statutes above quoted, and in order to have a clear understanding of the character and extent of the forfeiture declared, it is well to look at the forfeiture clause in each separately.

Section 3258 declares that—

> Every still or distilling apparatus not so registered, together with all personal property in the possession or custody, or under the control of such person, and *found in the building, or in any yard or inclosure connected with the building in which the same may be set up*, shall be forfeited.

Section 3305 declares that—

> The distillery, distilling apparatus, and the lot or tract of land on which it stands, and all personal property on said premises used in the business there carried on, shall be forfeited to the United States.

Section 16 of act of February 8, 1875 (18 Stat., 310), is still more comprehensive and explicit. It declares that—

> All distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors owned by such person, *wherever found*, and all distilled spirits or wines and *personal property* found in the distillery or rectifying establishment, or in any building, room, yard, or enclosure connected therewith, and used with or constituting a part of the premises; and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person *who knowingly has suffered or permitted* the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard,

or enclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery which shall be found in any such building, yard or enclosure, and all the right, title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States.

It would be difficult to make a statute more specific or comprehensive. It is intended to embrace every phase of fraudulent and criminal conduct and to put the person having a guilty knowledge, or occupying the position of accessory, on the same plane with the principal, or, rather, it makes them all principals in the commission of the fraud.

Further than this, it charges the wrong against the property itself. The land upon which the distillery is situate, the personal property used in and about the premises, and all the personal property of the distiller, wherever found, are tainted, and become forfeited to the Government.

In the case of *Dobbins's Distillery* vs. *The United States* (6 Otto, 395) it is decided that:

Where the owner of a distillery and other property connected therewith leased them for the purpose of distilling, the acts or omissions of the lessee in carrying on the business of distilling while he was in possession, and with intent to defraud the revenue, although they are unknown to the owner, subject the distillery and such other property to forfeiture to the United States.

And Mr. Justice Clifford, in delivering the opinion, on page 399, says:

The forfeiture claimed in the information is aimed against the distillery, and the real and personal property used in connection with the same, including the real estate used to facilitate the operation of distilling, and which is conducive to that end as the

means of ingress or egress, and all personal property of the kind found there, together with the distilled spirits and stills wherever found.

Nor is it necessary that the owner of the property should have knowledge that the lessee and distiller was committing fraud on the public revenue, in order that the information of forfeiture should be maintained. If he knowingly suffers and permits his land to be used as a site for a distillery, the law places him on the same footing as if he were the distiller and the owner of the lot where the distillery is located; and if fraud is shown in such a case the land is forfeited, just as if the distiller were the owner. (Burroughs, Taxation, 67).

In concluding the opinion, the learned judge also says:

Viewed in that light, the legal conclusion must be that the unlawful acts of the distiller bind the owner of the property, in respect to the management of the same, as much as if they were permitted by the owner himself. Power to that effect the law vests in him by virtue of his lease; and if he abuses his trust, it is a matter to be settled between him and his lessor, but the acts of violation as to the penal consequences to the property are to be considered just the same as if they were the acts of the owner.

If such is the law in regard to an innocent owner of premises, how much stronger is it where he has guilty knowledge, as was the case with Dixon.

Under the agreed statement of facts there can be no question that the frauds committed were sufficient to work a forfeiture of the property seized by the collector.

II.

When did the forfeiture take place?

The authorities are abundant upon this point. It took place at the time of the commission of the offense, and not at the time of seizure.

One of the first authoritative decisions made upon this

subject was in the case of *United States* vs. 1960 *Bags of Coffee*, (8 Cranch, 398). It was an appeal from the sentence of the circuit court for the district of Maryland, which had restored a quantity of coffee which had been seized and libeled for violating the non-intercourse act.

That act declared:

"That whenever any articles, the importation of which is prohibited by this act, shall, after the 20th of May next be imported into the United States, all such articles shall be forfeited."

In that case, after the act of forfeiture had been committed and before seizure, certain parties had, in good faith and without the knowledge of the forfeiture, purchased the coffee.

The question, therefore, was at what time did the forfeiture take place? Was it on the instant of committing the act of forfeiture or when the seizure was made? And the court holds that the forfeiture takes place at the time of the commission of the offense, and avoids subsequent sale to an innocent purchaser, although there may have been a regular permit for landing the goods, and although the duties may have been paid.

On page 405, in giving the opinion, the court used the following language:

It is true that cases of hardship and even absurdity may be supposed to grow out of this decision, but, on the other hand, if by a sale it is put in the power of an offender to purge a forfeiture, a state of things not less absurd will certainly result from it.

When hardships shall arise provision is made by law for affording relief under authority much more competent to decide on such cases than this court ever can be.

In the eternal struggle that exists between the avarice, enterprise, and combinations of individuals on the one hand, and the power charged with the administration of the laws on the other,

severe laws are rendered necessary to enable the executive to carry into effect the measures of policy adopted by the legislature. To them belongs the right to decide on what event a divesture of right shall take place, whether on the commission of the offense, the seizure, or the condemnation. In this instance we are of opinion that the commission of the offense marks the point of time on which the statutory transfer of right takes place.

In *United States* vs. *The Brigantine Mars* (8 Cranch, 417), the court held that "a forfeiture under the third section of the act of 28th June, 1809, ch. 9, will over-reach a bona fide sale to a purchaser for valuable consideration without notice of the offense."

In the case of *Gelston* vs. *Hoyt* (3 Wheaton, 311), it is held that a forfeiture attaches *in rem* at the moment the offense is committed and the property is instantly devested.

In the case of *Wood* vs. *The United States* (16 Peters, 342), Mr. Justice Story, on page 362, says:

The success of the fraud in evading the vigilance of the public officers, so that it is not discovered until after the goods have passed from their custody does not purge away the forfeiture, although it may render the detection of the offense more difficult and more uncertain. The whole argument turns upon this, that if the custom-house officers have not pursued the steps authorized by law to be pursued by them, by directing an appraisement of the goods in cases where they have a suspicion of illegality or fraud or no invoices are produced, but their suspicions are lulled to rest, the goods are untainted by the forfeiture the moment they pass from the custom-house. We can not admit that such an interpretation of the objects or langnage of the sixty-sixth section is either sound or satisfactory.

In the case of *Caldwell* vs. *The United States* (8 Howard, 366) it is decided that under the sixty-eighth section of the act of 1799—

The forfeiture is the statutory transfer of right to the goods at the time the offence is committed. The title of the United States

to the goods forfeited is not consummated until after judicial condemnation, but the *right to them* relates backwards to the time the offence was committed, so as to avoid all intermediate sales of them between the commission of the offence and condemnation.

And that—

Under the sixty-sixth section of the act, in which the forfeiture is the goods *or their value*, the United States have no title in the goods until an election has been made either to recover the goods or their value. Therefore, under that section, any rights in the goods acquired *bona fide* by third persons in the mean time are protected.

In the course of the opinion Mr. Justice Wayne says:

In the first, *the forfeiture* is, *the statutory transfer of right to the goods at the time the offence is committed.* If this was not so, the transgressor, against whom, of course, the penalty is directed, would often escape punishment and triumph in the cleverness of his contrivance by which he has violated the law. The title of the United States to the goods forfeited is not consummated until after judicial condemnation; but *the right to them* relates backwards to the time the offence was committed, so as to avoid all intermediate sales of them between the commission of the offence and condemnation.

The distinction arises from the fact that in one section the declaration of forfeiture is absolute and unconditional, while in the other it is in the alternative.

In the opinion above noted the learned judge refers with approval to the cases of *United States* vs. 1,960 *Bags of Coffee; United States* vs. *The Brigantine Mars*, and *Gelston* vs. *Hoyt.*

The foregoing cases relate mainly to the customs laws of the United States, and all of them hold that where the statute declares a forfeiture in absolute terms, it takes place upon the commission of the offense.

The sections of the internal-revenue laws hereinbefore

quoted are equally explicit and absolute in the terms by which they declare a forfeiture. In fact the form of expression is precisely the same as that adopted in the cases previously considered, and the doctrine announced has been applied by the courts to the provisions of the internal-revenue laws, and is particularly applicable to the case now under consideration.

In the case of *Henderson's Distilled Spirits* (14 Wallace, [illegible] decided that—

> "Where a forfeiture is made absolute by statute a decree of condemnation relates back to the time of the commission of the wrongful acts, and takes effect from that time, and not from the date of the decree. Accordingly where a removal of distilled spirits from the place where distilled, with intent to defraud the United States of the tax thereon, was alleged as a ground for the forfeiture of the spirits, it was *held* that neither the subsequent payment of the taxes nor the fact that the claimant was an innocent purchaser, without notice of the wrongful acts of the antecedent owner, constitute a defense to the charge.

And Mr. Justice Clifford in his opinion says:

> Repeated decisions of this court have established that rule in all cases where the forfeiture is made absolute by the act of Congress, and it necessarily follows that neither the subsequent payment of the duties nor the fact that the defendant is an innocent purchaser, without notice of the wrongful acts of the antecedent owner, constitutes any defense to the charge contained in the fourth article of the information. Many such adjudged cases are to be found in the reported decisions of this court, and it must be admitted that they establish the rule beyond all doubt, that the forfeiture becomes absolute at the commission of the prohibited acts, and that the title from that moment vests in the United States in all cases where the statute in terms denounces the forfeiture of the property as a penalty for a violation of law, without giving any alternative remedy, or prescribing any substitute for the forfeiture, or allowing any exceptions to its enforcement, or employing in the enactment any language showing a different in-

tent; and that in all such cases it is not in the power of the offender or former owner to defeat the forfeiture by any subsequent transfer of the property even to a *bona fide* purchaser for value without notice of the wrongful acts done and committed by the former owner.

In the case of *Thatcher's Distilled Spirits* (13 Otto, 679) the same doctrine is announced, and Mr. Justice Miller, in delivering the opinion, says:

Though claimant's counsel sets up the innocence of the present claimant in regard to the fraud or any knowledge of it, it can hardly be necessary at this day to reconsider the doctrine that when the act has been done which the law declares to work a forfeiture of the property, the right of the Government to seize the property, and assert the forfeiture, attaches at once, and may be pursued by the Government whenever and in whose hands soever that property may be found. (See *Henderson's Distilled Spirits*, 14 Wall., 44.)

The case of *Dobbins's Distillery* vs. *The United States* (in 6 Otto), heretofore referred to, is also in point.

On the 8th of June, 1878, Mr. Attorney-General Devens (16 Opinions, 41), in answer to a letter from the Secretary of the Treasury asking for an opinion upon the subject, held that:

Where an act is committed by the owner of a distillery by which a forfeiture thereof is incurred under the revenue laws, and subsequently the owner conveys the property to an innocent purchaser without notice of the commission of the act, the property remains still subject to the forfeiture incurred. The conveyance, in such case, passes no title as against the United States.

Thus it will be seen that in every case where this subject has been considered by the Supreme Court of the United States the decision has been that the forfeiture takes place at the time of the commission of the offense. The title and ownership pass from the wrong-doer to the

Government, and no act of seizure is required to effect the change.

This question has been considered at different times in the circuit and district courts of the United States, and, so far as a record has been made of their holdings, the weight of authority seems to be clearly in favor of the doctrine that the forfeiture takes place at the time of the offense.

In the case of *The United States* vs. 7 *Barrels Distilled Oil* (6 Blatchford, 174), Benedict, judge, held that:

> Where the owner of personal property, mortgaged by him to another person, remains in possession of it after giving the mortgage, and commits acts in respect to such property which work a forfeiture of it to the United States, under the twenty-fifth section of the internal-revenue act of March 2, 1867 (14 U. S. Stat. at Large, 483), it must be condemned, even though the mortgagee is not shown to have been concerned in such acts.
>
> * * * * * * *
>
> The remedy of the mortgagee is to apply to the Secretary of the Treasury for a remission of the forfeiture as respects his demand.

In *United States* v. 56 *Barrels of Whiskey* (1 Abb., U. S., 93, 4 Internal-Revenue Record, 106), Ballard, judge, held that—

> A *bona fide* purchaser of personal property, which has been forfeited to the Government by previous acts of the former owner, is not protected against the title of the Government. The right of the Government founded on the forfeiture must prevail over any title acquired by purchase subsequent to the forfeiture.
>
> The general rule in respect to the *time* when a forfeiture takes effect is, that when a statute denounces a forfeiture of property as the punishment of a violation of law, if the denunciation is expressed in direct terms and not in alternative, the forfeiture takes place at the time when the offense is committed, and operates at that time as a statutory transfer of the right of property to the Government.

In *United States* v. *Whiskey* (11 Internal-Revenue Record, 109, eastern district of Pennsylvania), Cadwalader, judge, held that—

> The merits of the controversy do not depend upon the state of things existing at the time of the detention or seizure, but upon the question whether a forfeiture had previously been incurred. If it had been incurred the title of the United States will have relation to the time when it was incurred; and the causes of forfeiture supposed by the seizing officer to have existed are, in that case, immaterial, if any sufficient cause alleged in the information is established by the evidence. The Supreme Court have often said, in effect, that in such cases the property is not forfeitable because it has been seized, but is seized because it was previously forfeited.

In case of *United States* v. 100 *Barrels of Spirits* (1 Dillon C. C., Rep. 57, 12 Internal-Revenue Record, 153), Dillon, judge, held that—

> It is to be taken as settled doctrine that when a statute in terms denounces a forfeiture of property as penalty for violation of law, without alternative of value or other qualifications or provisions, or language showing a different intent, the forfeiture takes place absolutely and instantaneously on the commission of the offense; title rests in the Government from that moment, and it is not within the power of the offender or former owner to defeat the forfeiture by a subsequent transfer, even to a *bona fide* purchaser.

This is the same cause which went to the Supreme Court and is reported in 14 Wall., heretofore referred to.

The same holding is made in *United States* vs. 21 *Bbls. High Wines* (6 Int. Rev. Rec., 213); *United States* vs. *The Distillery at Spring Valley* (11 Blatchf., 255); *United States* vs. 76,125 *Cigars* (18 Fed. Reporter, 147).

Considering the adjudications in all the courts they sustain the view taken by the Government in this case, and they are fully supported by sound reason.

If the distiller or dealer knows that a fraudulent and willful violation of the laws, whether known or unknown to the outside world, will devest him of his ownership and control of his property, he will be far more careful in the manner of conducting his business. If he is honest and upright he need entertain no fears, nor will he suffer any loss or inconvenience. If, on the other hand, he is led to believe that no harm can come to him, however iniquitous his course, until he is found out, his effort may and oftentimes will be not to avoid wrong, but to prevent its discovery. His study will be how not to be found out. He may pursue a course of "crookedness" for months, or even years, with only the risk of discovery, and if at any time he has reason to apprehend danger to or interference with his unlawful business, as soon as he sees the danger he can part with his property by sale or mortgage, and when the seizure is made, innocent purchasers step in to claim it.

The same cunning that enables him to commit and conceal fraud upon the public revenue, will enable him to dispose of his property, whenever the danger of forfeiture is imminent. Against this condition of things the Government would oftentimes be powerless to protect its self. The law of forfeiture is not only for the benefit of the Government, but also for the benefit of honest dealers, who are at times necessarily brought into competition with dishonest ones.

It is true that this rule may sometimes work a hardship to men who honestly and in good faith make purchases of property. But this would very seldom occur. Let it be understood that illicit distilling works a for-

feiture of property, and the public will become cautious and exercise greater care. If Stowell, in this case, had gone over the building for which he was willing to pay $8,000, he would have discovered the evidences of the carrying on of an illicit business. The cases of real hardship are few, and the injury in this respect is not to be compared with the harm which would come to the Government and the public by the adoption of the rule that forfeiture can only take place at the time of seizure.

More than this, it should be remembered that every person who considers himself aggrieved by the enforcement of a forfeiture may appeal to the Secretary of the Treasury for relief, and he should be required to make his appeal to the Secretary rather than attempt to neutralize those provisions of the law which render it effective in the suppression of fraud and the protection of the Government.

III.

The claim of counsel that the statutes here under consideration should be construed strongly against the Government can not be sustained by reason or authority.

In the case of *Taylor* vs. *The United States* (3 Howard, 197), it is distinctly held that—

> Revenue laws for the prevention of fraud, for the suppression of a public wrong, or to effect a public good are not in a strict sense penal acts, although they impose a penalty. But they ought to be so construed as most effectually to accomplish the intention of the legislature in passing them instead of being construed with great strictness in favor of the defendant.

The above case is approved and the same doctrine stated in *Cliquot's Champagne* (3 Wall., 114), and in

United States vs. 100 *Barrels of Spirits* (12 Int. Rev. Rec., 153).

From the foregoing authorities, as well as from the letter of the statute, the following propositions are established:

First. That Dixon being the owner of the property and the lessor of the same to the illicit distillers, and having full knowledge of the purposes for which they obtained it, and the frauds they were perpetrating against the Government, becomes himself subject to all the forfeitures and penalties imposed by the statute the same as if he were the actual distiller.

Second. The forfeiture operates upon the property itself, and the land, distillery, fixtures, and personal property become forfeited to the Government.

Third. This forfeiture takes place at the time of the commission of the offense denounced by the statute and not at the time of the seizure.

The still was put in place and the fraudulent work begun in September, 1884. It follows, therefore, that in September, 1884, this real and personal property became forfeited. By reason of the forfeiture it passed from the control and ownership of Dixon to the Government, and all conveyances, mortgages, and transfers of every kind made by Dixon after such forfeiture were void and gave no title or interest whatever to Stowell and Bevington.

Stowell claims title to the land and fixtures under a deed executed to him on the 13th day of October, 1884, and Bevington claims the horses and other property by bill of

sale dated November 11, 1884. Both transactions were subsequent to the forfeiture. Stowell obtained nothing by his deed for the reason that Dixon had nothing to convey, the land having passed out of his ownership by the forfeiture, which occurred in September. So also the bill of sale to Bevington was equally worthless, as the property included in it had been forfeited to the United States more than a month previous to that time. The fact that these men were innocent purchasers is of no avail. They could not obtain title from one who had no interest or title in the property. It is the case of one who attempts to sell what he does not own. The purchaser, however innocent, obtains nothing by the transaction.

In the brief of counsel for claimants they contend that the question is whether the property of a person, innocent of any charge or suspicion of crime or negligence, is to be forfeited because a third person has committed an offense.

I submit that the learned counsel misapprehend the facts and the question to be decided. Neither Stowell nor Bevington make any pretense of ownership until after the forfeiture. It is the guilty party, Dixon, whose property is forfeited. It never was and is not now the property of the claimants.

It is true that in the agreed statement of facts it appears that Stowell took a mortgage for $2,500 in June, 1883. He does not, however, claim anything under it; he saw fit to give up this mortgage and take a deed for the premises in October. This is a surrender of whatever claim he might have had, and a declaration that he will rely upon his deed. The mortgage was merged in what he supposed to be a higher and better title, to wit, the quit claim, and

by which he expected to become the absolute owner of the entire estate and interest in the land. He gave up one claim for what he thought to be a better one. But even if the mortgage had never been canceled, and no deed had intervened, still his claim to the property would fail.

He permitted the property upon which he had his mortgage to remain in the occupation and control of Dixon, who assumed all the rights and privileges of ownership, thus leaving it in his power to commit frauds and to be a party to frauds against the Government, and it would be a dangerous doctrine to say that a mortgagor, in possession of real estate, might carry on an illicit distillery upon the mortgaged premises, and shelter the property from forfeiture by the fact that it was blanketed with a mortgage to the extent of its value. The forfeiture denounced by the statute is aimed at the land, the property itself, and when the illicit and fraudulent distilling is carried on, it taints and attaches to the property. If the execution of a mortgage or bill of sale were permitted to shelter property which would otherwise become forfeited to the Government, it would open the door to endless crimes against the revenue laws.

It is hardly necessary, however, to consider this question now, as no claim of that kind is made by Stowell and Bevington. But if such a claim was made, the case of *The United States* v. *All the Distilled Spirits*, etc. (2 Ben., 486, 8 Internal Revenue Record 81), and the case of *United States* v. *Seven Barrels of Oil*, heretofore referred to, as well as others, might be cited as directly in point.

ALPHONSO HART,
Solicitor of Internal Revenue.

This brief is submitted in place of an oral argument, under a stipulation to submit, in accordance with an understanding between the attorneys for the respective parties, a year ago.

O. W. CHAPMAN,
Solicitor-General.

FILED
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JAMES H. McKENNEY
CLERK

CLAIMANTS BRIEF.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 746.

THE UNITED STATES PLAINTIFF IN ERROR.

vs.

JOSEPH STOWELL AND THOMAS BEVINGTON, CLAIMANTS, &c.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF OF CLAIMANTS.

The only material part of the record is the agreed facts at page 9. By clause 5 of the agreed facts it appears that neither of the claimants knew that an illicit business was carried on in the premises, and that a legal business was ostensibly and actually carried on there. The court must find that these claimants were innocent, not only of any wrongful intent, but even of negligence or blame of any kind. The question then to be argued is whether the property of a person innocent of any charge or suspicion of crime or negligence is to be forfeited and he thereby punished because a third person has committed an offence. To the consideration of this question we invite the attention of the court.

I

A. Penal laws are to be construed strictly.

1 Black Com. 91.
Margate Pier Co. vs. Hannum, 3 B. & Ald., 266.
Edwards vs. Dick, 4 B. & Ald., 212.
Green vs. Gemp, 13 Mass., 518.
Reed vs. Davis, 8 Pick, 513
Caledonian Railway vs. North British Railway, 6 App. Cases, 122.
Walton, ex parte, 17 Ch. Div., 756.
Jackson vs. Collins, 3 Cow, 89, 96.
People vs. Utica Ins. Co., 15 Johns, 258, 380.

We quote the words of Thompson, C. J., in the last case cited: "Such construction ought to be put upon a statute as may best answer the intention which the makers had in view. And this intention is sometimes to be collected from the cause or necessity of making the statute and sometimes from other circumstances; and whenever such intention can be discovered it ought to be followed with reason and discretion in the construction of the statute. although such construction seem contrary to the letter of the statute. Where any words are obscure or doubtful the intention of the legislature is to be resorted to in order to find the meaning of the words. A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter, and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers."

B. Especially forfeitures are not favored.

Hubbard vs. Taunton, 3 Taunt., 177.
Adams vs. Bancroft, 3 Sumn., 386.

II

Forfeiture is a punishment, and therefore, if a man who is wholly innocent can ever be punished for the crime of another, it must require language absolutely unequivocal before the court will so construe a statute. The cases we have cited show how strong the language must be. The language of the law and the intent of the law must clearly coincide in requiring such a construction. All the cases assume that in order to subject property to a forfeiture, the owner must himself have violated the law or must knowingly have suffered the property to go into possession of and control of some other person engaged in the regulated business. That is, if he either himself violates the law or knowing that another is violating the law permits him to have the use of his property in the unlawful business, or even permits him to have the use of his property in a business which is lawful, only if it be lawfully conducted, he may forfeit the property. There must be some degree of blame on the owner of the property ; for property has no guilty character except as connected with persons who are chargeable with responsibility or blame. If the owner is absolutely innocent the property cannot be forfeited. The mere accident of its situation cannot give it a criminal character independent of its owner's fault.

U. S. vs. Barrels of Spirits, 1 Low., 239.
Dobvins vs. U. S., 96 U. S., 359.

III

The general object of the statute is to enforce the payment of a tax on all liquor manufactured. It proposes to accomplish this object by inflicting punishments of fine, imprisonment and forfeiture on all actually guilty of attempting to defraud the government of the tax and by requiring vigilance on the part of all who are in any way concerned in the business and property to prevent and disclose any illegal acts under a penalty of a forfeiture of their goods. The legislature thought that the watchfulness of a man whose property was in danger would be greater than that of any government officer. Therefore every one concerned with an open distillery is bound to see that the law is not violated. If he chooses to leave his property in such a distillery, he does so knowing the risk and ought first to satisfy himself that there is no violation of law.

But if the distillery is a secret one and the owner is in ignorance of its existence and in no fault, what conceivable purpose is served by punishing him by a forfeiture of his property?

IV

If then the construction of the statute claimed by the government is first unjust, and second in no way within the object or intent of the law, the next question would seem to be whether the words of the statute are so imperative that we are driven to say that congress intended this unjust and unreasonable thing when they passed the law. We claim on the contrary that it clearly appears that the intention was just and reasonable and that congress does not deserve the imputation which the government would cast upon them.

V

Examining the whole chapter, Rev. Stats. Title XXXV, Chap. 4, in the light of these principles we find the law contemplates, (1) open lawful distilleries which are stringently regulated with numerous penalties and forfeitures.

§§ 3259, 3260, 3262, 3263, 3264, 3267, 3269, 3271, 3275, 3277, 3279, 3280, 3283, 3284, 3286, 3288, 3303, 3304, 3305.

In all cases arising under these sections knowledge of the nature of the busiuess at least is either expressly required or is assumed from the very nature of the thing. Thus every such open distillery must have a conspicuous sign stating that it is a distillery. §3279.

For instance the elaborate provisions of §3269 are absurd if applied to an illicit distillery. Of what consequence is it whether the pipes are painted black or red so long as the whole is concealed and secret.

The spirit of the law is farther well indicated by §3262 which contains elaborate provisions, the sole object of which appears to be to protect the government on one side and on the other to secure all innocent parties from loss. The spirit of that section is that no person is to be subjected to the forfeiture unless he has consented to assume that liability.

Thus it is said in U. S. vs. Distillery at Spring Vale, 11 Blatch., 255, 271 "It was therefore determined not to permit the business of distilling to be carried on unless nor until all the impediments to the creation and enforcement of a contemplated lien as well for penalties as taxes, and all impediments to the forfeitures were removed and this was important to prevent any suggestion that the law violated the constitution or its fundamental principles and also to hinder any allegation that property has been forfeited belonging to one who had not consented voluntarily to place it within the operation of and make it expressly subject to the law."

Then follows a summary of the section and the judge proceeds as follows: "The act of the owner is voluntary. His stipulation is in its nature and so far as any constitutional question is involved his stipulation is in effect that the forfeitures shall have operation notwithstanding his ownership."

It is clear then that the statute both by its express provisions and by necessary implication, in the case of open distilleries, imposes no forfeiture except on those who have expressly consented or knowingly exposed their property to the risk of forfeiture.

But there is another class of distilleries against which the law is also aimed; which are (2) illicit distilleries. This falls under §§ 3257 and 3281, which latter section has been superseded by St 1875, c. 39, § 16. In this latter case the owner of the property may be wholly innocent of any knowledge of the existence of the distillery. The proposition which we desire to maintain is that if he is ignorant of the existence of the distillery, his property cannot be forfeited.

As we have seen in case of lawful distilleries no person's goods are forfeited unless he has knowingly exposed them to forfeiture. There is no reason why any harsher rule should be applied in case of illicit distilleries.

In speaking of this section the court says: "Section 3281 contains various provisions for forfeiture. It forfeits (1) spirits and distillery apparatus owned by the illicit distiller wherever found. (2) All spirits and personal property found on the premises of the illicit distillery." (3) The interest of the distiller in the premises. (4) The interest of every one who has permitted the use. (5) Personal property on premises used for egress. (6) Real estate knowingly allowed to be used for egress. Knowledge of the use of the place as a distillery at least, whether in an unlawful manner or not, seems to be clearly predicated in all these cases except the fifth. The illicit distiller knows his own fraud, it is presumed, and so his spirits and apparatus are forfeited wherever found. The owner of all spirits and personal property found on the premises of the illicit distillery is held to forfeit it on the view that being on the premises, it is presumed to be used in the illicit business or to be its product and that the owner is bound to know that it is a distillery. The interest of the illicit distiller in the distillery premises is forfeited because he is presumed to know the fraud. The interest in the premises of every person who has knowingly suffered or permitted the business of a distiller to be there carried on or has connived at the same is forfeited because knowing that the place was used for a distillery and permitting it to be so used, he is made responsible for its use in a fraudulent manner. The interest in any premises held for egress and ingress to or from the illicit distillery of every person who has knowingly suffered or permitted such premises to be used for such ingress or egress is forfeited, because knowing that the place was used for a distillery, and permitting his premises to be used for ingress or egress to and from such distillery, he is made responsible for its use in a fraudulent manner. In every one of these five cases there is to be knowledge that there is a distillery." Gregory vs. U. S., 17 Blatch., 328-9.

It is undoubtedly true that the presumption is against any one whose property is found in the illicit distillery, especially if such property is in its nature adapted to use in the illegal business. But it is equally clear that the owner may rebut this presumption and prove that he was wholly innocent. "If the condition in which it was found brings it within the words of the clause in the section, the onus is upon the claimant to make out to the satisfaction of the court and jury that the situation of the property was consistent with his innocence." Nelson J., in U. S. vs. One Still. 5, Int. Rev. Rec., 189. Take the case for instance of stolen property. It is clear that it would be unjust, unreasonable and preposterous that the real owner should forfeit such property by its being found in an illicit distillery. Suppose that a person drives his horse upon premises secretly used as a distillery for some innocent and legitimate purpose and while there the distillery and the horse are seized, cannot he claim it?

These illustrations and others of the like class which will suggest themselves prove two points; first, that innocence may be proved, and second, that there are exceptions to the literal meaning of the law. The moment it is admitted that there are such exceptions the

matter is settled, for if there is any exception, no one will dispute that our case will fail within it. 2 Op. Attorney Gen. 428.

The Bello Corrunes 6 Wheat 152.
Peisch vs. Ware, 4 Cranch 347, 362.

VI

It ought to be enough simply to state our position. If a man leaves his property and parts with the control of it for a legal and proper purpose, no act of the tenant, unknown to him, and without his consent, can deprive him of his property.

VII

We understand that the decision in U. S. vs. 33 Barrels of Spirits, I Lowell 239, covers this case; and we cite the words of Judge Lowell: "It is impossible to believe that any such sweeping condemnation is intended to be passed founded upon mere proximity in place upon the goods of all persons, innocent or guilty."

It is a rule of law as well as of natural justice that statutes will not be understood to forfeit property except for the fault of the owner, general or special, unless such a construction is unavoidable.

VIII

As the statute has absolutely required the assent of the landlord or lessor to the business of licensed distilling, it would certainly have reserved to him some power to control the property and restrain violations of the law, if it had intended to hold him responsible. If the law is as is claimed by the government the case would stand like this: A man lets his estate for a legal and legitimate business. After a time he learns that the tenant has set up an illicit still. He has no power to enter the premises and stop him. He can only inform the government officers that they may come and sieze the premises; that is, may come and sieze his own property. The government constriction of this statute says to the landlord: "If you give us any information of the illegal acts of your tenant, you shall be punished by a heavy fine." Our construction says to the landlord: "If you do not as soon as you learn of the crime of your tenant inform the government, you shall be punished." Which construction will carry out the end of the law? Which construction is it probable the legislature had in view?

IX

We claim that any such construction would be unconstitutional. And we cite the dictum of the court in U. S. vs. Distillery at Spring Vale, 11 Blatch., 255, 271.

X

But it may be asked why congress did not more explicitly guard against such a construction as that claimed? The answer is that no congress for one moment supposed that the government would ever attempt to rob a citizen of his property, when it knew and admitted that he was guilty of no crime. The suggestion made in one case